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October 23, 2024

Honorable James D. Peterson
District Court Judge
U.S. District Court
Western District of Wisconsin
120 North Henry Street, Room 320
Madison, WI 53703

Re: ***United States of America v. Steven Anderegg***
W.D. Case No. 24 cr 50 (jdp)

To the Honorable James D. Peterson,

In anticipation of tomorrow's hearing, the parties have met and conferred and are setting the table for everything that the Court will likely want to know tomorrow and some proposed dates for the Court to consider. There are four topics.

First, the defense filed a handful of pretrial motions. The reason an omnibus brief did not accompany them is my notes are incomplete on a key piece of the evidence—particularly the precise images that Instagram flagged and that are described in the search-warrant affidavit. I have seen the images twice and my notes reflect two different images being the ones described in the search warrant. That issue (what is the precise image) should be resolved next week when I see the images for a third time. Anticipating that, the parties would propose the following schedule, which works with our respective trial calendars:

- Defense's omnibus brief in support of pretrial motions due 11/8
- Government's response: 11/27
- Defense's reply 12/9

At this point, I do not anticipate needing an evidentiary hearing on any motion, but if that changes, I will immediately alert the government and the Court.

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Second, we must address expert disclosures and what to anticipate. The defense will likely notice two experts. One on the artistic value of the images and another on the therapeutic value of creating the images. The government will likely notice a single expert on the forensic issues. We would propose the following schedule for disclosure:

- Government disclosure: 12/2
- Defense disclosure: 12/16

Third, the defense will file a motion to have copies of the images arguing that they do not fall within the ban under 18 U.S.C. § 3509(m). The parties disagree on this, and we would anticipate filing briefs that mirror the schedule set for pretrial motions and articulated above.

Fourth, given the nature of this case and the potential issues flagged above, both sides anticipate there being additional pre-trial motions and *Daubert* challenges that need to be vetted and want to make sure the Court is aware of that possibility given the current trial date.

Thank you for your attention to this matter.

Sincerely,

HURLEY BURISH, S.C.

Electronically signed by Joseph A. Bugni

Joseph A. Bugni

JAB:mns

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